

**JUN 30 2003**

**FILED**

STATE OF NEBRASKA )  
DEPARTMENT OF INSURANCE, )  
 )  
PETITIONER, )  
 )  
vs. )  
 )  
JEROME J. O'CONNOR, JR., )  
 )  
RESPONDENT. )

CAUSE NO.: A-1502

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
RECOMMENDED ORDER AND  
ORDER**

## FINDINGS OF FACT

1. Respondent is a licensed Nebraska insurance producer whose current registered address with the Department is P.O. Box 3721 Omaha, NE 68103.
2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
3. On or about May 13, 2003, the Petition and Notice of Hearing were served upon Respondent by mailing the same to his address of record by certified mail, return

receipt requested. Respondent received the Petition and Notice of Hearing on or about May 15, 2003 as evidenced by the return receipt card attached to Exhibit 5.

4. On or about July 22, 2002, Respondent was the subject of an administrative action filed by the Department in State of Nebraska Department of Insurance v. Jerome J. O'Connor, Jr., Cause No.: A-1484. Respondent was represented by counsel during the course of that administrative action. In an effort to conclude the matter, Respondent signed a Consent Order on or about March 31, 2003 in which Respondent agreed to pay an administrative fine to the Department of \$1,000 for violations of Neb. Rev. Stat. §44-4059(b) and (h) and Title 210 Nebraska Administrative Code, Chapter 36, Section 021.02. (Exhibit 6).

5. Respondent failed to pay the \$1,000 fine within thirty (30) days after receipt of the signed Consent Order which resulted in the Department's filing a petition on May 13, 2003. (Exhibits 1, 2).

6. Respondent testified that it was his understanding that there would be a payment plan for him to pay the \$1,000 in installments. However, the objective evidence presented does not support Respondent's position. The Consent Order is silent on the issue. A letter dated April 2, 2003, to Respondent's then counsel from Department counsel explained that the payment was due thirty days after the receipt of the order and warned that failure to pay the fine will result in further administrative action against Respondent. (Exhibit 6).

7. Neither Respondent nor his counsel contacted the Department to discuss a payment plan before the fine was past due.

8. Respondent objected to the Department's offering the return receipt card attached to Exhibit 5, which was signed by Respondent's partner, Kirt Elliott, as proof of his receipt of the Petition and Notice of Hearing. That objection is overruled. Respondent obviously received notice of the hearing as he was present, in person, at the appointed time.

9. Respondent objected to Exhibit 6, specifically the Consent Order, as proof that he agreed to pay the fine because page 2 of the Consent Order contains a reference to his partner, Kirt Elliott, and Elliott's consent to pay a \$1,000 fine. That objection is overruled. Respondent stated numerous times during the hearing that he was the subject of Cause No.: A-1484, that he intended to pay the \$1,000.00 fine and that he had signed the Consent Order agreeing to pay a \$1,000.00 fine. The reference to Kirt Elliott in Respondent's Consent Order appears to be an error.

10. Respondent testified that he had the funds to pay the \$1,000.00 fine and offered to do so following the hearing, however, the Hearing Officer does not know whether Respondent paid the fine after the hearing concluded.

#### CONCLUSIONS OF LAW


1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-4041 et seq.*
2. The Department has personal jurisdiction over Respondent.
3. Respondent violated *Neb. Rev. Stat. §44-4059(1)(b)* and (h) by failing to pay the administrative fine of \$1,000 when due.

### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent be ordered to pay the \$1,000.00 administrative fine agreed to in the Consent Order of April 2, 2003, and that Respondent pay an additional \$1,000.00 administrative fine as a result of the proceedings for this cause, A-1502. Respondent shall pay all administrative fines owed to the Department totaling \$2,000 (\$1,000 for Cause A-1484 and \$1,000 for this cause, A-1502) within thirty (30) days from the date the Director of Insurance signs this Order. Respondent's failure to pay the administrative fines when due will result in immediate suspension of Respondent's insurance producer license until said fine is paid.

Dated this 30<sup>th</sup> day of June, 2003.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
Christine Neighbors  
Hearing Officer

### CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance v. Jerome J. O'Connor, Jr., Cause No.: A-1502.

Dated this 30<sup>th</sup> day of June, 2003.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



L. TIM WAGNER  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon the Respondent by mailing a copy to Respondent at P.O. Box 3721, Omaha, NE 68103 by certified mail, return receipt requested on this 30<sup>th</sup> day of June, 2003.

